



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 11, 1996

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR96-2350

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102424.

The Texas Department of Public Safety (the "department") received a request for "any and all records regarding or relating to Spencer E. Nichols and his licensing and history with the department." The department has released most of this information to the requestor. However, you contend that some of the requested information is excepted from disclosure under section 552.107 of the Government Code because it consists of "work product and attorney-client communications."

This office recently issued Open Records Decision No. 647 (1996), holding that attorney work product may be protected under both sections 552.103 and 552.111 of the Government Code if the litigation for which attorney work product was created is currently anticipated or pending, or under section 552.111 if the litigation has concluded. Open Records Decision No. 647 (1996) at 3. You state that the information at issue was created in preparation for a "hearing held in 1988," but you have not asserted that the information is related to currently anticipated or pending litigation. Therefore, we do not consider your work product arguments under section 552.103. Instead, we presume that the "hearing held in 1988" has concluded, and we will address your work product arguments under section 552.111.

In Open Records Decision No. 647 (1996), we concluded that a governmental body may withhold information under section 552.111 if the governmental body can show (1) that the information was created for civil trial or in anticipation of civil litigation under the test articulated in *National Tank v. Brotherton*, 851 S.W.2d 193 (Tex. 1993), or after a civil lawsuit is filed, and (2) that the work product consists of or tends to reveal an attorney's "mental processes, conclusions, and legal theories." Open Records Decision No. 647 (1996) at 5. You have

informed us that "[i]n 1988, the Department held a hearing on its decision to deny Dr. Nichols' registration," and that "[i]n preparing for that hearing, the Department staff attorney created some documents for review and some attorney-client conversations were put in writing." However, you have not established that the 1988 hearing constitutes litigation for purposes of the section 552.111. Therefore, section 552.111 does not except the information at issue from disclosure.

You also claim that the information is excepted from disclosure pursuant to section 552.107(1) of the Government Code. Section 552.107(1) excepts information from disclosure if:

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct. - -

Gov't Code § 552.107(1). In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, factual information or requests for legal advice communicated by the client to the attorney and legal advice or opinion rendered by the attorney to the client. *Id.* at 7-8. Section 552.107(1) does not, however, protect purely factual information. *Id.* Having reviewed the information at issue, we find that some of the information represents the attorney's legal advice or opinion. We have marked the legal advice and opinion accordingly, and the department may withhold the marked information from disclosure under section 552.107. As for the remainder of the information, you have not established that this information is "privileged information" protected by section 552.107. Therefore, the department must release the remainder of the information to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 102424

Enclosures: Submitted documents

cc: Mr. James J. Elliott
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(w/o enclosures)